

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MERT DUYMAYAN,
Plaintiff,

v.

LAS VEGAS CITY CODE
ENFORCEMENT,
Defendant.

Case No. 2:25-cv-00225-GMN-EJY

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff's application to proceed *in forma pauperis* ("IFP") and Complaint. ECF Nos. 1, 1-2. Plaintiff's IFP is indecipherable and incomplete as no name is visible on the form, which is also not signed. Further, Plaintiff's Complaint fails to state a claim against an identifiable Defendant or by establishing jurisdiction. The Court recommends this matter be dismissed in its entirety.

I. Screening Standard

Upon granting Plaintiff's IFP application the Court must screen his Complaint under 28 U.S.C. § 1915(e)(2). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, il to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A federal court must dismiss a claim if the action "is frivolous or malicious[,] fails to state a claim on which relief may be granted[,] or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). The standard for dismissing a complaint for failure to state a claim is established by Federal Rule of Civil Procedure 12(b)(6). When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions to cure its deficiencies unless it is clear from the face of the complaint that the deficiencies cannot be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). In making this determination, the Court treats all allegations of material fact stated in

1 the complaint as true, and the court construes them in the light most favorable to the plaintiff.
2 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).

3 Allegations of a pro se complainant are held to less stringent standards than pleadings drafted
4 by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does
5 not require detailed factual allegations, a plaintiff must plead more than mere labels and conclusions.
6 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a
7 cause of action is insufficient. *Id.* In addition, a reviewing court should “begin by identifying
8 pleadings [allegations] that, because they are no more than mere conclusions, are not entitled to the
9 assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can
10 provide the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
11 there are well-pleaded factual allegations, a court should assume their veracity and then determine
12 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a complaint
13 states a plausible claim for relief ... [is] a context-specific task that requires the reviewing court to
14 draw on its judicial experience and common sense.” *Id.*

15 Finally, all or part of a complaint may be dismissed *sua sponte* if the plaintiff’s claims lack
16 an arguable basis either in law or in fact. This includes claims based on legal conclusions that are
17 untenable (e.g., claims against defendants who are immune from suit or claims of infringement of a
18 legal interest which clearly does not exist), as well as claims based on fanciful factual allegations
19 (e.g., fantastic or delusional scenarios). *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989);
20 *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

21 **II. Plaintiff’s Complaint**

22 Plaintiff’s Complaint identifies only one Defendant, which is not an entity but a department
23 of the City of Las Vegas (Code Enforcement). ECF No. 1-2. Plaintiff avers jurisdiction based on
24 diversity; however, he and the only Defendant are located in Las Vegas Nevada, and the amount of
25 damages is stated as a conclusion. *Id.* It is worth noting that Plaintiff filed another lawsuit in this
26 Court on the same date as the instant lawsuit in which he claims Westland Real Estate Group is in
27 violation of unidentified building codes. *See Duymayan v Westland Real Estate Group*, Case No.
28 2:25-cv-00222-CDS-EJY.

1 The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before
 2 it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3).
 3 Federal courts are courts of limited jurisdiction and possess only that power authorized by the
 4 Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed
 5 to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc.*
 6 *v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party
 7 asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.”
 8 *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. General Motors*
 9 *Acceptance Corp.*, 298 U.S. 178, 189 (1936)). Federal jurisdiction must “be rejected if there is any
 10 doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th
 11 Cir. 1992).

12 Federal district courts “have original [subject matter] jurisdiction of all civil actions arising
 13 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Here, Plaintiff’s
 14 Complaint presents issues of state law only; that is, unidentified building or occupancy codes. ECF
 15 No. 1-2 at 4. Thus, federal question jurisdiction is not pleaded. Federal district courts also have
 16 subject matter jurisdiction over civil actions in diversity cases “where the matter in controversy
 17 exceeds the sum or value of \$75,000” and where the matter is between “citizens of different States.”
 18 28 U.S.C. § 1332(a). “Section 1332 requires complete diversity of citizenship; each of the plaintiffs
 19 must be a citizen of a different state than each of the defendants.” *Morris v. Princess Cruises, Inc.*,
 20 236 F.3d 1061, 1067 (9th Cir. 2001). Plaintiff pleads he and the only Defendant are residents of
 21 Clark County, Nevada.¹ Given this circumstance, the Court finds stating diversity jurisdiction is not
 22 possible and, therefore, amendment would be futile.

23 **II. Recommendation**

24 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff’s Application to Proceed *in*
 25 *forma pauperis* (ECF No. 1) be DENIED and Plaintiff’s Complaint (ECF No. 1-2) be dismissed

27 ¹ Further, Plaintiff asserts he is entitled to money damages in the amount of \$10 million in a conclusory fashion
 28 without providing plausible factual support for this amount, which is insufficient to establish the necessary amount in
 controversy. *Dubois v. Boskovich*, Case No. 21-cv-03224-SK, 2021 WL 7448625, at *2 (N.D. Cal. July 22, 2021).

1 without prejudice so that Plaintiff can, if he so chooses, pursue his claim in the Eighth Judicial
2 District Court for Clark County, Nevada.

3 Dated this 6th day of February, 2025.

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5 ELAYNA J. YOUCHAK
6 UNITED STATES MAGISTRATE JUDGE
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9 **NOTICE**

10 Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
11 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
12 that the courts of appeal may determine that an appeal has been waived due to the failure to file
13 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
14 held that (1) failure to file objections within the specified time and (2) failure to properly address
15 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
16 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
17 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
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